

88

# **Notice of Allowability**

**Application No.**

10/706,559

**Applicant(s)**

SMITH ET AL.

**Examiner**

Kathleen Sonnett

**Art Unit**

3731

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/8/2006.
2. ☒ The allowed claim(s) is/are 2-13 and 15-22.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The closest prior art of Rocheleau et al. (U.S. 6,641,525) and Lee et al. (U.S. 6,024,690) will be discussed. Rocheleau discloses a surgical assembly comprising a surgical passer (60, 58) having a wire portion (col. 5 ll.57-58) attached to a handle (64), the wire portion having a free distal end, an outer periphery, and at least one recess (see fig. 11) therein in a distal end region. The surgical assembly further includes a tube element (54) having a proximal end, a tissue penetrating distal end (fig. 17), and a channel extending therein from an opening at the proximal end and defined by an inner periphery, the channel having at least one projection (98; fig. 6) projecting outwardly into the channel in a distal end region thereof, wherein the outer periphery of the surgical passer is dimensioned relative to the inner periphery of the channel of the tube element so that the surgical passer is positionable within the tube element, and wherein, when so positioned, the at least one tube element projection engages the at least one surgical passer recess to removably couple the surgical passer to the tube element (col. 11 ll.52-62). Lee et al. also discloses a surgical assembly comprising a surgical passer and a tube element, the surgical passer having at least one recess (61) in the distal end and the tube element having at least one projection (62) that engages the recess (see fig. 7).

However, neither Rocheleau et al. nor Lee et al. disclose or fairly suggest a configuration between the passer and tube element wherein there is substantially no interference between the surgical passer and the tube element other than from the at least one tube element. Although both Rocheleau et al. and Lee et al. disclose sterilizing the assembly, the individual parts of the assemblies are made separable and no mention is made of limiting interference between the parts to facilitate, for example, sterilization by allowing gas to flow freely into a region distal of the projection.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Sonnett whose telephone number is 571-272-5576. The examiner can normally be reached on 7:30-5:00, M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCS 2/8/2007

  
GLENN K. DAWSON  
PRIMARY EXAMINER